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82-379

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

COASTAL PETROLEUM COMPANY,
Petitioner,

v.

MOBIL OIL CORPORATION,
THE FLORIDA DEPARTMENT OF NATURAL RESOURCES, and
THE BOARD OF TRUSTEES OF THE
FLORIDA INTERNAL IMPROVEMENT TRUST FUND,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Eleventh Circuit should be summarily reversed because it relied on the dissenting opinion in *Smith* v. *Kansas City Title & Trust Co.*, 255 U.S. 180 (1921), a decision which has never been reversed or weakened and has been followed by this Court as recently as 1978.

2. Where a federal question of navigability is the determinative issue in a litigation involving title to land under state law, and is properly pled as an element in the complaint, does the case arise under federal law for purposes of jurisdiction under 28 U.S.C. § 1331?

PARTIES BELOW

All the parties at all prior stages of this litigation are listed in the caption. The petitioner, Coastal Petroleum Company, is a subsidiary of Coastal Caribbean Oils and Minerals, Ltd., a Bermuda Corporation. Petitioner has no other affiliates or subsidiaries.

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 671 F.2d 419 (1982). The opinion of the District Court is unreported. Both opinions are reproduced in the Appendix.

JURISDICTION

The judgment of the Court of Appeals was entered on March 4, 1982. A timely petition for rehearing was denied on April 21, 1982. A timely application for an extension of time to file this petition was granted by Mr. Justice Powell on July 7, 1982, extending the time within which to file this petition to and including September 3, 1982. Jurisdiction in the district court was invoked under 28 U.S.C. § 1331. Jurisdiction in this court exists under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

United States Code, Title 28 § 1331 provides:[1]

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

STATEMENT OF THE CASE

The Court of Appeals in this case followed and adopted the dissenting opinion in *Smith* v. *Kansas City Title & Trust Co.*, 255 U.S. 180 (1921), despite the fact that the majority opinion in that case has never been overruled or weakened by any subsequent decision and despite the fact *Smith* is indistinguishable from this case. The grounds of the decision below were not argued, briefed or suggested by any party but were announced *sua sponte* by the Court.

The issue here is clear and simple—does this case "arise under" federal law so as to sustain jurisdiction in the federal courts under 28 U.S.C. § 1331, the federal question statute. Certiorari should be granted and the judgment below reversed summarily on the authority of *Smith, supra.* Alternatively, if this Court feels that the decision in *Smith* should be reexamined, certiorari should be granted and the case set for argument.

This case began in 1976 as a suit in a Florida state court between Coastal Petroleum Company and Mobil Oil Corporation when Mobil filed a declaratory judgment suit for judicial construction of a submerged lands exploration agreement between Mobil and Coastal. Coastal responded, in part, with a counterclaim asserting that Mobil had converted phosphate and uranium from lands owned by Florida and leased to Coastal. Coastal also claimed that Mobil had injured Coastal by concealing information Mobil was obligated to provide under the exploration agreement. Coastal brought the Board of Trustees

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[1] When this case began, 28 U.S.C. § 1331(a) included a $10,000 "amount in controversy" requirement which was deleted by Congress in 1980.

of the Internal Improvement Trust Fund of the State of Florida into the suit as an interested party. Mobil then replied by amending its complaint to assert a prayer for a declaration of its rights under a deed from the Trustees in a certain parcel in which Coastal and the Trustees also claimed rights, a parcel which was coursed by the Peace River. Mobil's rights, if any, in that parcel depended on a showing that the Peace River was not navigable at the time Florida became a State.[2] Recognizing the central importance of the navigability issue, Mobil's amended complaint specifically alleged that the Peace River was "not navigable in fact" at statehood.

After Mobil filed its new claim, Coastal and the Trustees removed the case to the United Stated District Court for the Northern District of Florida, asserting that Mobil's claim arose under federal law and presented a federal question, *i.e.*, the navigability of the Peace River, and that the District Court had original jurisdiction under 28 U.S.C. § 1331 and removal jurisdiction under 28 U.S.C. § 1441. Mobil filed a motion to remand, arguing the claim did not "arise under" federal law. Judge Stafford denied the motion in an opinion holding that jurisdiction existed since the navigability issue was "to be determined by federal law" and that "Mobil's rights may be defeated or supported if federal law is given one construction or effect." App. at 2a-3a.

Thereafter Coastal's claim for damages based on concealment of information was severed and tried separately, resulting in a federal jury verdict of $20,000,000.00 in Coastal's favor. Judge Stafford also issued an injunction against Mobil's persistent efforts, after he had made certain pivotal rulings, to avoid a federal court determination by initiating state court suits seeking decisions on title to lands claimed by Coastal and

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[2] If the Peace was navigable at statehood in 1845, then Florida obtained title to the river bed under the "equal footing" doctrine. Under Florida law, lands so obtained are "sovereignty lands" which could not have been conveyed to Mobil. On the other hand, if the Peace was not navigable in 1845, Florida obtained title to the land in 1850 under the Swamp and Overflow Lands Grant Act, 9 Stat. 520, codified at 43 U.S.C. § 982, and Mobil argues the Trustees then later conveyed good title to Mobil. *See* 671 F.2d at 423, App. at 12a.

Mobil. One of those state court suits involved the same parcel of land involved in the federal suit and the state suit would have relitigated certain issues already determined in the federal suit. Judge Stafford accordingly enjoined Mobil's effort to interfere with the federal litigation by relitigating identical issues in state court.

Mobil filed separate appeals to the Eleventh Circuit from the judgment on the jury verdict for $20 million and the injunction issued by Judge Stafford. Both appeals raised a common legal issue—whether the District Court had jurisdiction over the case. The Court of Appeals consolidated the two appeals and, in an opinion by Judge Tjoflat, held that there was no federal jurisdiction. 671 F.2d at 426, App. at 18a. Although that court recognized that the determination of navigability would "resolve the controversy," and was properly pled as a necessary element of Mobil's claim, it nonetheless held that the case was not one that arose under federal law. Relying primarily on the dissent in *Smith, supra,* the Court of Appeals reasoned that Mobil's rights, if any, were entirely the concern of state law. The Court of Appeals did not accept Mobil's argument that federal jurisdiction was absent because the navigability issue should be decided under state law. Instead, the Court of Appeals agreed with Coastal's argument that the navigability of the Peace was to be determined using federal law concepts. *See, e.g., United States* v. *Oregon,* 295 U.S. 1, 14 (1935), *United States* v. *Holt State Bank,* 270 U.S. 49 (1926), *Oregon* v. *Riverfront Protection Ass'n.,* 672 F2d 792, 794 (9th Cir. 1982). Nonetheless the Court of Appeals held there was no federal jurisdiction because "the federal question relied upon by [Coastal] is a mere criterion which Florida chooses to adopt as the determinant of a rule of state real property law," 671 F.2d at 424, App. at 13a. The Court of Appeals vacated the $20 million judgment and dissolved the injunction.

Coastal and the Trustees both sought stays from this Court. Those applications were denied by Mr. Justice Powell and by the full Court. Nos. A-897, A-913, 102 S.Ct. 2029 (May 3, 1982).

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals has Rendered a Decision Inconsistent with the Controlling Decision of this Court

Although this case is controlled by this Court's decision in *Smith, supra,* the Court of Appeals followed the dissent in that case rather than the majority. *Smith* has never been overruled. Indeed the rationale of that decision has been consistently followed by this Court, most recently in *Duke Power Co.* v. *Carolina Environ. Study,* 438 U.S. 59 (1978).

In *Smith* a shareholder sued a Kansas City trust company to enjoin it from investing in farm loan bonds issued under the authority of the Federal Farm Loan Act of 1916, 39 Stat. 360. The complaint alleged that while the trust company was authorized to invest in government bonds, it could not invest in bonds that were not issued under a valid law and the Farm Loan Act was alleged to be unconstitutional and beyond the power of Congress to enact.

This Court first examined the jurisdictional issue to decide "whether the cause of action set forth arises under the Constitution or laws of the United States." *Smith, supra,* at 199. The Court stated the principle:

> "The general rule is that, where it appears from the bill or statement of the plaintiff that the right to relief depends upon the construction or application of the Constitution or laws of the United States, and that such federal claim is not merely colorable and rests upon a reasonable foundation, the District Court has jurisdiction under [the Federal question] provision." *Id.*

Writing for the Court, Mr. Justice Day then quoted Chief Justice Marshall's statement of the rule:

> "A case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise under the constitution or a law of the United States, *whenever its correct decision depends upon the construction of either," Cohens* v. *Virginia,* 6

> Wheat. 264, 379 (5 L. Ed. 257); and again, when "the title or right set up by the party, may be defeated by one construction of the Constitution or law of the United States, and sustained by the opposite construction." *Osborn* v. *Bank of the United States*, 9 Wheat. 738, 822 (6 L. Ed. 204); quoted in *Smith, supra*, at 199. (emphasis added).

The Court then cited nine subsequent Supreme Court decisions in which the principle had been quoted and approved or followed. *Smith, supra*, at 200. The Court went on to analyze the principle as it applied to the facts in that case. It was noted that the trust company directors contended the federal law was constitutional, while the plaintiff claimed it was not. It was noted "that the controversy concerns the constitutional validity of an act of Congress which is directly drawn in question. The decision depends upon the determination of this issue." *Smith, supra*, at 201. Finally the Court concluded "that the District Court had jurisdiction under the averments of the bill. . . ." *Id.*, at 202.

Mr. Justice Holmes dissented on the basis of his conclusion that jurisdiction was absent. Because the Court of Appeals in this case adopted the Holmes' dissent, it will be quoted at length to show how precisely similar are the relevant facts in this case and the *Smith* case:

> "It is evident that the cause of action arises not under any law of the United States but wholly under Missouri law. The defendant is a Missouri corporation and the right claimed is that of a stockholder to prevent the directors from doing an act, that is, making an investment, alleged to be contrary to their duty. But the scope of their duty depends upon the charter of their corporation and other laws of Missouri. If those laws had authorized the investment in terms the plaintiff would have had no case, and this seems to me to make manifest what I am unable to deem even debatable, that, as I have said, the cause of action arises wholly under Missouri law. If the Missouri law authorizes or forbids the investment

> according to the determination of this Court upon a point under the Constitution of Acts of Congress, still that point is material only because the Missouri law saw fit to make it so. The whole foundation of the duty is Missouri law, which at its sole will incorporated the other law as it might incorporate a document. The other law or document depends for its relevance and effect not on its own force but upon the law that took it up, so I repeat once more the cause of action arises wholly from the law of the State.
>
> But it seems to me that a suit cannot be said to arise under any other law than that which creates the cause of action.... The mere adoption by a State law of a United States law as a criterion or test, when the law of the United States has no force proprio vigore, does not cause a case under the State law to be also a case under the law of the United States, and so it has been decided by this court again and again."

Smith, supra, at 214-15 (dissenting opinion). This dissenting view has never been adopted by a majority of this Court and the Court's decision in *Smith* decision remains valid today. In 1946 Mr. Justice Black, writing for the Court, said:

> "[T]he right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another. For this reason the district court has jurisdiction." *Bell* v. *Hood,* 327 U.S. 678, 685 (1946).

Eleven years later Mr. Justice Frankfurter had occasion to comment on the issue:

> "[D]ecisions under the general statutory grants have tested jurisdiction in terms of the presence, as an integral part of the plaintiff's cause of action, of an issue calling for interpretation or application of federal law.... Although it has sometimes been suggested that the 'cause of action' must derive from

> federal law . . . it has been found sufficient that some aspect of federal law is essential to plaintiff's success. *Smith* v. *Kansas City Title & Trust Co. . . .*" *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 470 (1957) (dissenting on an unrelated issued).

In 1963 Mr. Justice Brennan, joined by Chief Justice Warren and Mr. Justice Black, discussed the vitality of *Smith*:

> "It has been suggested that later decisions . . . repudiated Smith. . . . But those decisions are clearly distinguishable. . . . Smith remains firm authority for the principle that 'where federal law has inserted itself into the texture of state law, a claim founded on the national legislation could be brought into a federal forum even if the ritht of action was state-created." *Wheeldin* v. *Wheeler,* 373 U.S. 647, 659 (1963) (citations omitted, dissenting on another issue).

Just four years ago this Court again drew on *Smith* in sustaining jurisdiction based on § 1331 in *Duke Power Co.* v. *Carolina Environ. Study,* 438 U.S. 59, 70 (1978).

The Court of Appeals did not explain why it felt free to rely on the *Smith* dissent. The rationale of the Court of Appeals' decision was not argued below. Mobil argued that the issue of navigability was to be determined under state law and hence federal jurisdiction was lacking. Mobil did not suggest that Federal jurisdiction was lacking if the navigability issue was to be decided under Federal law. Indeed such a suggestion would have appeared foolhardly in light of *Smith.* The Court of Appeals did not accept Mobil's argument, concluded the navigability issue was controlled by Federal law, yet went on to—in effect—overrule the *Smith* majority and rely on the dissent. Because that reliance is unexplained (and indeed inexplicable) and in light of the continuing validity of the majority opinion in *Smith,* we submit that certiorari should be granted and the judgment of the Court of Appeals summarily reversed.

We recognize that summary reversal is an infrequent practice, but it is appropriate in cases of clear error like this one. It is particularly appropriate here where the same error in a Fifth Circuit decision has been previously reviewed and reversed by this Court. In *International Association of Machinists* v. *Central Airlines*, 372 U.S. 682 (1963), the Fifth Circuit had held that a suit to enforce an award under the Railway Labor Act did not arise under Federal law because the suit was "nothing more than a state-created action to construe a contract." 295 F.2d. 209, at 220. There—as here—the Court of Appeals had relied on *Smith*. In that case this Court reversed the decision below; it should do so here as well.

II. Certiorari Should be Granted to Decide an Important Issue on Which There is a Conflict in the Circuits

Courts and commentators have noted that the federal question doctrine is one which has not been resolved with complete clarity. The confusion is illustrated by the fact that the Court of Appeals in this case held there was no federal jurisdiction, despite the seemingly clear lesson of *Smith* and its more recent progeny. Proper resolution of this issue is important to the administration of justice in the federal courts. If the Court of Appeals is not summarily reversed the decision below will create additional confusion in the precedents over this issue—a confusion which this Court should try to dispel.

This case presents the Court with an excellent vehicle to clarify "[t]he most difficult single problem in determining whether federal jurisdiction exists . . . when the relation of federal law to a case is such that the action may be said to be one 'arising under' that law." 13 *Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction*, § 3562, Supp. at 339 (1980). The "last comprehensive discussion by the Supreme Court" of this basic principle occurred in 1936 in *Gully* v. *First National Bank*, 299 U.S. 109. *Wright, Miller & Cooper, supra*, main volume at 405. The lower federal courts continue to struggle with the *Gully* decision in its application to other cases. "Although the Supreme Court has rendered several relevant decisions, these cases do not fit snugly into a single, logical mossaic." *Keaukaha-Panaewa Com.* v. *Hawaiian Homes*

Com'n., 588 F.2d 1216 (9th Cir. 1978). The uncertain state of the law in this area is illustrated by the fact that in this case the lower courts were divided on the issue and the Court of Appeals relied primarily on a dissenting opinion from this Court. If this Court is not prepared to summarily re-affirm *Smith* and reverse the decision below, this case should be set for full briefing and argument.

The uncertainty and conflict in the law is illustrated by the recent decision of the Fourth Circuit in *City National Bank* v. *Edmisten*, 681 F.2d 942 (1982). In that case five national banks sought a declaratory judgment that a proposed credit card annual membership fee would not violate state usury laws, alleging that the case arose under 12 U.S.C. §§ 85 and 86 which regulate the interest which may be charged by national banks. The Court of Appeals held there was no jurisdiction, but noted:

> "[A] state-created cause of action may also arise under federal law if the resolution of the dispute depends upon the validity, construction or effect of federal law, so long as the federal question is a real and substantial issue, *Shulthis* v. *McDougal*, 225 U.S. 561, 569 (1912), and its resolution is an essential element of plaintiff's case. *Gully* v. *First National Bank*, 299 U.S. 109, 112 (1936)." *City National Bank, supra*, at 945.

That statement of the law clearly conflicts with the decision of the Eleventh Circuit in this case. The conflict should be resolved by this Court before it creates further confusion. The decision below is perhaps too recent to have been noticed by other courts, and it was not referred to in the *City National Bank* case. However, it can be expected that other courts may well cite and follow the decision below if certiorari is denied.

The procedural complications in this case graphically demonstrate why this Court should review this case to minimize any possibility that other courts will follow the Eleventh Circuit. Relying on seemingly well-established principles Coastal and the Trustees removed this case to the district court. That court, again relying on seemingly well-established principles, upheld

its own jurisdiction and proceeded to try the case. Exhaustive discovery was undertaken. Hundreds of thousands of documents were reviewed. More than 20,000 pages of testimony were taken in discovery and at trial. Six years of time involving multiple lawyers for each party were consumed. The total claims involved in the litigation exceed $1,400,000,000. Despite the massive investments of judicial, legal and economic resources, the proceeding—according to the Eleventh Circuit—has been flawed from the beginning and now must start anew in state court. This wasted effort has resulted from a single appellate decision which may reflect an unwarranted concern over limiting federal jurisdiction to alleviate growing caseloads. It does not contribute to efficient allocation of resources for courts to strike without warning, go against 60 years of established doctrine, and set aside the cumulative work of thousands of hours because of a concern to divert litigation from federal courts. Such a concern would be especially misplaced here. There is an important federal interest in the resolution of this suit. If the Peace River was navigable at statehood, the United States retains a navigation servitude that is paramount to the interests of Coastal or Mobil. *See Coastal Petroleum* v. *United States*, 524 F.2d 1206 (Ct. Cl. 1975). The adjudication of this Federal interest should not be left to the state courts. This case is the type of controversy which should be resolved in the comparatively more detached federal forum.

This appeal arises out of one of more than ten related cases pending in the federal and state courts in Florida.[3] These cases

[3] The federal cases are: *Coastal, et al.* v. *International Minerals and Chemical Corporation*, Case No. TCA 77-0946; *Coastal, et al.* v. *U.S.S. Agri-Chemicals*, Case No. TCA 77-0971; *Coastal, et al.* v. *Swift Agricultural Chemicals Corporation*, Case No. TCA 77-0972; *Coastal et al.* v. *Agrico Chemical Company*, Case No. TCA 77-0973; *Coastal, et al.* v. *W.R. Grace & Company*, Case No. TCA 77-0974, *Coastal, et al.* v. *American Cyanamid Company*, Case No. TCA 77-0975; *Coastal* v. *Mobil*, Case No. TCA 82-0787; *Coastal* v. *Mobil, et al.*, Case No. TCA 79-0730, all pending in the Northern District of Florida. The state cases, in which proceedings were enjoined by the federal court are: *Mobil Oil Corporation* v. *Coastal Petroleum Company,*

(footnote continued)

involve large claims against virtually the entire Florida phosphate industry, an industry second only to tourism in importance to the Florida economy. Thus, it is particularly important that this case be tried in the most neutral forum possible where the interests of the State, the private parties and the Federal Government can all be protected. That forum is the federal court.

(footnote continues)

Case No. GC-G-81-2198; *United States Steel Corporation* v. *Coastal Petroleum Company*, Case No. GCG-81-2443; *International Minerals & Chemical* v. *Coastal Petroleum Company*, Case No. GCG-81-2480; *American Cyanamid Company* v. *State of Florida, Department of Natural Resources*, Case No. GCG-80-290.

CONCLUSION

For the reasons set forth, this Court should grant the petition for a writ of certiorari and summarily reverse the decision of the Court of Appeals on the authority of the *Smith* decision. Alternatively the case should be set for argument to decide the important Federal question presented and resolve the conflict in the law on federal jurisdiction under § 1331 evidenced by this decision and the decision of the Fourth Circuit in *City National Bank.*

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